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VOL. VII--NO. 35.1

HONOLULU, WEDNESDAY, SEPT. 13, 1871.

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Supreme Court-In Equity. BEFORE HARTWELL, VICE CH.

Kapea et al. vs. Wm. L. Mochonua. by false representations to sign a pretended answer is stated in the Opinion of the Court. A. F. Judd for the complainants.

OFINION OF THE COURT.

rent due on a written lease, to find for the de- of Makalena, who drew the deed of April 10. order concerning it is made. fendant if the lease was made and received in 1865, and says he read and explained its contents fraud of creditors. Like instructions were given to Antone, who had previously requested him to in Cockett vs. Hubbard, Ib., 101, on the in- draw this deed; that he suggested that some validity of a deed of conveyance as against consideration should be expressed, whereapon creditors. So in Alo vs. Blair et als., Ib., 153. Autone said he owed respondent \$800 for four In Williams et als. vs. Kaea, Ib., 236, a deed of years rent of the fish pond, and that after the conveyance, absolute on its face, was held to deed was drawn, read and explained. Antone have been intended as a mortgage, and a re- approved it. After Antone's death, his widow conveyance on payment of the debt was decreed. and sister went to see the respondent at his In Turner's case, Ib., 266, in probate, the Court request, talked with him about their shares of held that an administrator must account to the the property, and were told to go back and live intestate's heirs for the proceeds of a sale of the there as before until the widow married again, real estate ordered by the Court, purchased by a when her husband must take care of her. No third party for the administrator and by him reacts of ownership on the land were performed by sold, on the ground that a trustee should derive the respondent during Autone's lifetime, except

no benefit from his trust. In Clephorn vs. Austin et als., at the April him respondent's consent was necessary before Term, 1867, of this Court, an action of contract he could execute the said lease. The only exwas brought to recover the value of goods mort- planation of the said notice of respondent's agency gaged to the plaintiff by the defendants' assignor of Antone's land is in the evidence of the woman in bankruptcy. The defence that the mortgage who testified that she was sent by Antone, in was in fraud of rights of creditors, and executed 1867, to ask respondent to see him about his by an illiterate person without full knowledge of Manoa land, and that the newspaper notice was its effect, was held by the Court in banco to be concerning that land. The day before the deed good. In Ainini vs. Kala, in Equity, in June, of April 10, 1865, Antone had a talk with the 1869, a conveyance of land was decreed to be respondent, at the house of the latter, in the void on the ground of fraud, or under advantage presence of Makalena, who drew the deed, on the taken of a position of trust to drive an unfair subject of sudden deaths, and the propriety of bargain with an aged woman, and a reconveyance | making their property over to each other to was ordered. These cases are all that have come avoid trouble after death. Makalean is not sure before this Court, so far as I can learn, which that Antone felt that the respondent could sell all his land the day after this deed was made, and

The roles which apply in this case are need not wait until after his death; he also states

J., in Rhodes vs. Bate, 1 Ch., 257, (1866.) Equity on established principles of Equity.

mitted, which appear to me to be in any degree tone's use of respondent's fish-pond; a debt not material to the issue. in December, 1849, acknowledged by one of its ent proof. The evident alteration of figures in witnesses after Maan's death, April 29, 1869, and one of the deeds causes suspicion. recorded April 30, 1869, is in the respondent's I do not think the deed of 1865 expresses the possession. May 16, 1867, and for several weeks geal agreement between the parties. Every fact | that life is a burden.

Bill in Equity alleging that Antone Haalon, under whom the complaments claim, was induced power of attorney which which was in fact a deed of conveyance of his lands to the respondent, now claimed by his heirs. The nature of the

R. H. Stanley for the respondent.

Court has been invoked for the purpose of reveyance be set aside on petition of the vendor, and some six or eight months before his death, away.

No Life Insurance Company does business very plain and clear. As between the grantee that he heard after the date of this deed that and the granter and his heir a convavance exand the grantor and his beir, a conveyance ex- respondent was Antone's agent. He says he ecuted under false representations, and by mis- thought Antone intended a gift of his land to the take of its meaning and effect, is always held to respondent. Agent for the Hawaiian Islands. be void. In addition to the decisions above re- The three lots conveyed by this deed were ferred to, the remarks of the Court in two recent worth as follows, viz.: The Kalihi lot, purporting English Chancery cases will serve to define the to be sold by respondent to Antone in 1860 for rule which must be applied when, as in this case, \$800; the house lot worth \$1,000 in 1860, and special advantage is obtained by one occupying \$1,500 now; the kale lot, worth in 1865, \$750. | the Empire of Germany free transit through Egypt, a position of trust. "The jurisdiction exercised | The year after Antone's death, both the complainby Courts of Chancery over the dealings of ants and the respondent paid the taxes on these persons standing in certain fiduciary relations lots. The respondent, in his answer, says that his has always been regarded as one of the most newspaper notice of agency referred to Antone's salutary description. Whenever two persons Manoa land, and was in consequence of acts of stand in such a relation that while it continues, trespass committed there, greatly to Antone's anconfidence is necessarily reposed by one, and the novance; but it is not shown that Antone had influence which naturally grows out of that confidence is possessed by the other, and this con- nace of Jan. 30, 1866, or that he ever suffered fidence is abused, or the influence is exerted to from acts of trespass on his land. The respondobtain an advantage at the expense of the con- ent, in his answer also says that before lessing fiding party, the person so availing himself of his his fish-pond to Antone, he had leased it to one position will not be permitted to retain the ad- Keliiopanui for \$200 a year; but this same Kevantage." Per Chelmsford, Ld. Ch., in Tate vs. | liiopunui testifies that he never had the pond Williamson, 2 Ch., 61, (1866.) "I take it to be from the respondent, but was placed in its charge THE UNDERSIGNED having been ap- a well established principle of this Court, that by Antone during the three years preceding the persons standing in a confidential relation towards | death of Kamehameha IV. in 1863. None of others can not entitle themselves to hold benefits Antone's or the respondent's acquaintance ever which those others may have conferrred upon heard either of them speak of the sale except as them unless they can show to the satisfaction of already stated by Komo and Makalena. The the Court that the persons by whom the benefits Registrar merely asks natives who acknowledge FRHE UNDERSIGNED, AGENTS of the have been conferred, had competent and inde-instruments, whether it is their signature, and if pendent advice in conferring them." Per Turner, the paper is correct? There is no evidence that

Antone ever disagreed with his family or showed The rule of course applies also, that fraud is any ill-will towards them, or expressed any denever presumed but must be established by af- sire to confer a special benefit on the respondent. firmative evidence, and that a deed prima facis On these facts, it seems clear enough to my valid can only be set aside by proof of sufficient mind that Antone never intended to convey the facts to authorize the intervention of a Court of fee of his lands to the respondent, onless by a species of trust deed. It is not claimed that the I will recite the facts in the case which are conveyance was made from love and affection, but proved by uncontradicted evidence, or are ad- for a previous debt of \$800, on account of An-

not shown to be over \$600. Why should An-Antone Haalou, master of a coasting vessel | tone, in 1865, merely to pay this debt, convey not trading between these Islands, died intestate in only the Kalihi land, which respondent says he Henolulu, in April, 1869, leaving a widow, a conveyed to Antone in 1860 for \$800, but other sister and a nephew, the complainants. He was | land of at least \$2,250 in value, being all the land an old friend of the respondent, and lived on he possessed thereby disinheriting his hears? It terms of great intimacy with him. In 1860, requires proof of clear reasons for such an atter-(Aug. 10.) the respondent executed and delivered ly improbable and reckless course, to make it to Antone his promissory note in the sum of seem even probable or the act of a sane mind. \$600. payable Feb. 10, 1861, which note has never The \$800 debt is not proved, and the \$600 been cancelled or re-delivered, and is now in pos- shown to have been received by Antone from the session of Antone's heirs. Sept. 27, 1860, re- proceeds of the fish-pond were as likely to have spondent executed to Antone a conveyance of been in payment of the note, as is the deed of certain land in Kalini. Apana 5, Land Award Sept., 1860, executed before the note fell due No. 6450, in which a consideration of \$500 is and never shown to be in Antone's hand, or stated in figures, the figure 8 having evidently to refer to land which he ever claimed to own. been originally a 6, and changed to an 8. This It seems a far more natural inference that this conveyance is acknowledged, not recorded, and conveyance was not completed by delivery. If it is now in the respondent's hands. Antone, by were conveyed when the need of re-delivery of his first wife, had an interest in certain land in the deed in 1865 on a re-conveyance, unless the Manoa Valley, which, by deed of Jan. 30, 1866, latter transaction was a deed of trust? he conveyed to one Kamalula, the deed being The notice of agency is not explained. If tresduly acknowled and recorded on the day of its passes were committed on Antone's land in Madate. It does not appear that he ever had any non in 1867, or if he owned any land there then, talked for effect at the moment when the indicinterest in any other land in Manon, or elsewhere, | it might and ought to have been shown how. If except in a certain house lot and in a kalo lot in the respondent were authorized to sell or lease Honolulu. April 10, 1865, Antone executed a Antone's land as he says he was, he knew very deed of conveyance to the respondent of the well, being a man of experience and intelligence, said house and kalo lots, and of the hand in that some power of attorney was requisite to Kalihi described in the respondent's conveyance anthorize him to execute leases and deeds for of Sept. 27, 1860, in which the consideration of Antone. He shows none, however, except in the \$800 is expressed. This deed is signed by An- document dated April 10, 1865. tone's mark, witnessed by Thomas Brown, and The fish-pond is not shown previously to have acknowledged and recorded on the day of its been lessed to Kelliopunul as the answer claims, date, and is in the respondent's possession. The and only a three year's payment of its proceeds Royal Patent to Akoni, No. 3602, of said house to Antone is shown. lot, is in the complainant's possession, and Royal No explanation is better than one which is Patent, No. 658, of said kalo lot, to one Maso, contradicted by the respondent's own witnesses, with his conveyance thereof to Antone, executed and not sustained in points susceptible of pres-

\$6.00 PER YEAR.

as appear in Komo's evidence that Antone told

calling upon all men to come before him and not empower the latter to act for him. The recordbefore Antone. June 15, 1868, Antone gave to ing of the deed is all that conflicts with this view, one Ani a lease of a portion of his house lot for and that, in connection with all the facts shown, one year, with privilege of renewal for six years, is consistent with equitable ownership remaining by indentures signed by himself and Ani. The in Antone. respondent was aware that this lease was applied The respondent's silence about the sale, his cwn for and that it was executed, and did not inform and Antone's assertions of an agency only, Anthe lessee that he claimed to own the lot. The tone's occupancy, claims and acts of ownership, respondent owns a fish pond at Kalihikai, of the relations of trust and confidence existing bewhich Antone had the profits for three years, tween the respondent and this illiterate sailor. It is seldom that the Equity power of this placing a native in charge who paid to him its and the inordinate advantage derived by the resproceeds, \$200 a year for three years, from 1860 pondent from the transaction, the utter failure to sciuding conveyances. In the Morrison case, 2 to 1863. Antone, with his wife, wile's father explain the agency notice, these are facts too sig-Haw., 272, the Chancellor decreed that a con- and sister lived on the house lot until his death, milicant to be winked out of sight or explained on the ground of fraud, by reason of misrepre- declined to sell the kalo lot, on urgent request I therefore decree that the respondent do desentations made by the vendee when occupying from Mr. Everett who desired to buy, stating as liver up for cancelling, the deed of April 10, 1865, certain confidential relations with the vendor. a reason for not wishing to sell, that he required and that he execute a valid deed of conveyance

This decree was affirmed by the Court in banco. the land for the support of his family. He was to the complainants, of the house lot and kalo repeatedly known to speak of the respondent as lot in Honolule. In regard to the Kulihi lot, In Wood vs. Stark, I Haw., 9, the jury were his agent, but was never heard to speak of having there is not proof that it was actually sold and instructed in an action of contract to recover sold his land, except as appears in the evidence delivered. Its legal title is not disturbed, and no

ALPERD S. HARTWELL, HONOLULU, August 25, 1871.

LONDON, Aug. 18 .- The famine in Posts is more terrible than previously reported. There have been 27,000 deaths at Ispanan alone from starvation, and the condition of the Provinces is still worse. The rice crop is a complete failure, and the cattle plague, small-pow, typhus fever, and cholers prevail; The borring fishery is unusually successful in Scot-

In the House of Lords, to-day, the Lord Chancelfor and Viscount Halifax defended in the most vigorous manner the measures which have been pressed by the Government at this session of Parliament, and especially those providing for the use of the ballot at elections, and for the regulation of the army.

1862, but that the Government of Great Britain had directed that the treaty was still in effect and binding, and of obligatory force.

the aid Germany might give Turkey in the Indies. portheast of Paris.

which a war might be likely to secure, is

LONDON, Aug. 19 .- A dispatch from Gumbiner East Prussia, a town 66 miles east of Konigsberg, says the cholera has appeared in several districts on

e German aide of the Russian from Swiss Confederation has appointed M. Jaques stacupfil, Senior Federal Counsellor, and formerly President of the Republic, Arbitrator on the part of witzerland, under the Treaty of Washington. New Your, Aug. 20. - The Dublin correspon

of the London Times of the 9th, describing the Dublln riot, says P. J. Smith, member of Parliament, was proceeding with his speech, when suddenly ton Monument, a considerable body of police truncheon in hand, who, without uttering a word of that throughout the period during which so many readful wounds were given by the police, no re sistance was offered, and none could be offered. No ense was attempted, beyond the use of umbrellas the loaded truncheons. Every one within reach was assailed. Newspaper reporters, (Conservative and Liberal,) many of them with note-book and pencil in hand-some personally known to the police for gely attacked as any one else. Flying victims were tripped, in order that while on the ground they might be bludgeoned. A person was quietly walk and one of them dealt him a fearful kick on the hip which staggered him; before he could atter a cry, a blow from a truncheou felled him to the earth h

om Parls on the 8th inst., says in regard to the Court-Murtial for the trial of Communists: I was surprised at the want of interest shown by the pub; The place was little more than half full. The occupying a platform raised above the body of the hall. The men I had seen the day before in their prison neglige, I now saw arrayed as for the Boule so dear their countrymen generally, that the eyes of Europe were upon them. They struck mosk haroto attitudes, then glanced round to see whether they charged them with the heaviest offenses. Forrers was particularly tickled at the stress hid woon his complicity in the murder of hostages, and Asal was ling over with jokes from the beginning to the end of his acte d'accusulless. Regure, with scrupulonely fitting gloves covering his small hunds, which he affectedly passed through his carefully brushed hair, and with the sliffest and whitest of shirt collars stood for the most part surveying the andlease with a bland patropizing smile. It seemed an especial pleasure to any of them to find a friend in the udience and to nod to him in a familiar way, as though to resseure him, and then length perhaps because the friend showed some confusion at the unwelcome recognition. In fact they seemed to regard the whole affair as an elaborate and not had practical joke got up for their especial benefit.

with whiskey; the worms get drunk, drop off, and

52" Business Carls, when prepaid for one year, are allowed a discount from these rates, which are for transient allowments, when paid or charged questiony.

following the respondent published in the Au in the case points to the conclusion that this in-Okoa newspaper, in Honolulu, a notice that he strument was intended and believed by Antone had come to be in charge of all Antone's lands, to be a conveyance in trust, to respondent, to seto manage, sell or lease them at his option, and | cure him against real or imagined trouble, and to

Hawaiian Gazette

RATES OF ADVERTISING.

Space Measured in 1 w. 1 m. 2 m. 5 m. 6 m. 12 m.

Justice of the Supreme Court.

Late Foreign News,

In the House of Commons, Viscount Rafield, Under Secretary of Foreign Affairs, in reply to a question, said. Mexico had repudiated the treaty of

MADRID, Aug. 19. - Gomes Palledo is appointed Captain-General at Porto Rico, in place of Bladersch. recently resigned.

Panis, Aug. 19.-It is reported that it has been decided that the Assembly is to remain at Versullies; certain of the government offices are, however, to be removed to Parls New York, Aug. 19. - A Tunis correspondent, under date of July 24th, states that there is a probability of war between Egypt and Turkey, and that the personal relations of the Khedlys and Sultan are far from being friendly. Some time ago a revolt occurred at a village in Arabia, near the Red Sea terminus of the Sues Canal, and to apporess it 20,000 troops were dispatched there by order of the Sultan. There the troops remain, and the Viceroy of Egypt, dreading the bazards of war, seems unwilling to take steps which may indicate his readiness to accept the gauntlet thus thrown down by Turkey. The surmise is that Turkey, desiring to regist the encroachments of Russia in the East, wishes to offer

drawing from the neighborhood of the fortification VERSAULES, Aug. 19,-In the Assembly, to-day, recommending its passage. The Bill, as returned to the Chamber, makes military service compulsory, and allows no one the right to procure a substitute; hillits soldiers from voting in political elections.

It is unofficially reported that the President of the